

**FILED**

**FEB 25 2011**

**PATRICK E. DUFFY, CLERK**  
**By DEPUTY CLERK, MISSOULA**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

BRIAN MADPLUME,	)	CV 10-39-H-DWM-RKS
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MONTANA STATE PRISON,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Brian Madplume filed a Complaint in this matter on August 10, 2010. On September 15, 2010, United States Magistrate Judge Keith Strong found that the Complaint failed to state a claim upon which relief may be granted. Additionally, Judge Strong identified a number of defects which could potentially be cured by Madplume and gave him until October 1, 2010 to do so. During the interim Madplume requested and received two extensions of time to file an

amended complaint, the last extension giving him until December 31, 2010. To date, Madplume has failed to file an amended complaint.

United States Magistrate Judge Keith Strong entered Findings and Recommendation (dkt #12) in this case on January 18, 2011. Judge Strong recommended, for the reasons set forth in his Order dated September 15, 2010, that the Complaint be dismissed with prejudice. Plaintiff did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Strong’s Findings and Recommendation.

Accordingly, IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (dkt #12) is adopted in full and the Complaint is DISMISSED WITH PREJUDICE. The Clerk of Court is directed to close this case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the

docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Madplume's Complaint fails to state a claim upon which relief may be granted.

Finally, IT IS ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

Dated this 25<sup>th</sup> day of February, 2011.



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Donald W. Molloy, District Judge  
United States District Court